



THE UNITED STATE PATENT AND TRADEMARK OFFICE

In re application of:

Larry W. Blake

Art Unit: 3738

Appl. No.: 09/631,576

Examiner: Javier G. Blanco

Filed: August 4, 2000

Our Ref: 316-110P-WLK

For: TWO PART "L"-SHAPED
PHAKIC IOL

ON APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES
APPLICANT'S BRIEF

Mail Stop Appeal Brief – Patents
COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. ISSUES BEFORE THE BOARD

The issues before the Board in this Appeal are as follows:

- A. [Withdrawn]
- B. [Withdrawn]
- C. [Withdrawn]
- D. Whether claims 40, 51-53, 56-61, 67-69, 74, 75, and 77-79 are unpatentable under 35 U.S.C. § 103(a) over Lecoq (FR 2 770 394).

II. APPEALLANTS' ARGUMENT

LeCoq (FR 2 770 394) does not render Claims 40, 51-53, 56-61, 67-69, 74, 75, 77-79

obvious.

In the Examiner's Answer dated July 5, 2006, the Examiner rejected claims 40, 51-53, 56-61, 67-69, 74, 75, 77-79 under 35 U.S.C. § 103(a) as being unpatentable over LeCoq (FR 2 770 394).

The subject claims recite a combination including at least two cleats on the haptic and at least two eyelets on the optic (Independent claims 40 and 79), or alternatively, at least two cleats on the optic and at least two eyelets on the haptic (Independent claims 77 and 78). LeCoq does not disclose the feature of cleats and eyelets for attaching an optic to a haptic. Instead, LeCoq only discloses a lens 35, as shown in Figure 9, having anchoring tabs (24) to be received within two small radial grooves (22), as shown in Figure 8. By well-accepted definitions of the word "eyelet" the two small radial grooves (22) and having a trapezoidal shaped (23), as shown in Figure 10, are not eyelets, and the anchoring tabs (24) are not oriented or arranged to act or perform as cleats.

As stated in the Examiner's Answer, the Examiner states "LeCoq does not particularly disclose the radial grooves 22 as "eyelets". It should be noted that slots, eyelets, apertures, or notches are considered obvious equivalents in the art, as admitted by the Applicant in the present application at page 13, lines 20-21 (See Figures 8B and 8E). Applicants own admission is evidence that slots, eyelets, apertures or notches are functionally equivalent, compatible and interchangeable. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to either have used slots, eyelets, apertures, or notches as admitted by Applicant to be attached to a cleat, such designs are functionally equivalent, compatible and interchangeable. One of ordinary skill in the art, furthermore, would have

expected any of these designs (i.e. slot, eyelet, aperture or notch) to perform equally well with a cleat as long as the cleat will firmly attach to the corresponding slot, eyelet, aperture or notch, but will allow for easy removal of the lens (i.e. changers facilement de lentille”; see page 4, lines 18-21).”

Appellant does not admit that slots, eyelets, apertures, or notches are “equivalents” at page 13, lines 20-21 of the original specification. Appellant is clearly setting forth different or alternative embodiments of the present invention at this section (see language at page 13, line 16). Specifically, the preferred embodiment shown in Figure 2A (see language at page 5, lines 19-20) and Figures 2-7 is described in significant lengthy detail under the heading Detailed Descriptions of the Preferred Embodiment beginning at page 6, lines 6, through page 13, line 15. A description of the alternative embodiments is limited and disclosed beginning at page 13, line 16 through page 14, line 21 (i.e. approximately one page). The subject claims are claiming at the preferred embodiment shown in Figures 2-7 and not the alternative embodiments shown in Figure 8B, 8E having “slots” instead of “eyelets”. The slots, eyelets, apertures, or notches are clearly alternatives and not equivalents.

It is important to note that the particular types of mechanical fasteners are different in the various embodiments and that the resulting combination as far as structural arrangement and functionality are also different depending on the particular combination of fasteners or couplers between the lens optic and the haptic.

Importantly, the Examiner has not provided any evidence that the different types of mechanical fasteners or couplers (i.e. fastening system) such as slots, eyelets, apertures, or notches as being equivalents. Specifically, the Examiner has not provided any analogous and related prior art showing the specific combination of a pair of cleats and a pair of eyelets for connecting or fastening a lens optic to a lens haptic, let alone the particular combination set forth in the claims. If references with cleats and eyelets in the context of attaching a lens optic to a lens haptic are available or considered obvious equivalents in the art, where is the prior art disclosing and showing such feature? Appellant invites the Examiner to provide such references if available.

Very importantly, attempting to replace the fastening arrangement including the anchoring tabs (24) of the lens (35) (Figure 9) and the two small radial grooves (22) of the double ring (12) (Figure 8) in the intraocular device of LeCoq with the cleat/eyelet fastening arrangement according to the claimed invention is not suggested. Specifically, the intraocular device of LeCoq is configured so that the lens (35) is located in the same plane of the inner ring (25) so that the outer perimeter of the lens (35) closely fits and mates with the inner perimeter of the inner ring (25). Specifically, LeCoq discloses that the “supported piece is then locked within the interior of the internal loop, where it will fit as precisely as possible and remain stable.” (See page 15, lines 21-22 of translation). Further, please see the detailed disclosure at page 13, lines 1-14 of the translation of LeCoq. Clearly, LeCoq requires that the lens (35) be surrounded and captured within the inner peripheral of the inner loop (25) to provide operational stability so that the device operates properly.

In the presently claimed invention, the cleat/eyelet fastening arrangement requires a portion of the optic at the location of the eyelets or cleats to overlap portions of the haptics. Thus, the claimed combination including the cleat/eyelet fastening arrangement precludes the optic being located within the haptic as required by the device of LeCoq without significant further modifications or alternations clearly not suggested by LeCoq (i.e. overlapping eyelets or cleats mechanically interfere with optic closely or tightly fitting within haptic in device of LeCoq). Thus, not only does LeCoq not disclose the claimed cleat/eyelet fastening arrangement, but such a proposed substitution is not suggested and specifically taught away from by LeCoq itself. This clearly emphasizes the significant difference in both the fastening arrangement and the overall configuration of the lens attachment according to the presently claimed invention versus that disclosed by LeCoq. LeCoq clearly does not render obvious Appellant's claimed invention.

Regarding Claim 53, LeCoq does not disclose a haptic with a hinge. Further, LeCoq teaches away from the double ring 12 having a hinge, since the rigid or stiff structural integrity of the double ring 12 is critical to securely connecting with the lens 35. Thus, LeCoq does not teach or suggest the claimed combination.

Regarding claim 68, LeCoq does not disclose a lower modulus material partially or completely covering the haptic. Thus, LeCoq does not teach or suggest the claimed combination.

Regarding claim 69, LeCoq does not disclose a hinge comprising a toe region, foot region and a lower modulus material extended toward the foot region. Thus, LeCoq does not teach or suggest the claimed invention.

Regarding claim 74, LeCoq discloses a short incision (in the order of three millimeters (3 mm)) at page 2, line 8 of the translation. Further, LeCoq discloses a limbic opening having a length of 3 mm. if need be, from 3.5 to 4 mm. at page 7, lines 23.24. The double ring (12) disclosed by LeCoq requires structural rigidity or stiffness, and thus is not compressible. It is important to note that going below the 3 mm. size incision is technically difficult or impossible to obtain with the double ring configuration disclosed by LeCoq. In contrast, the unique configuration of the haptic according to the present invention allows for incisions as small as 1.0 mm. Thus, to reduce the size of the incision required by the device of LeCoq is not taught or suggested by LeCoq. Clearly, LeCoq does teach or suggest the claimed invention.

Regarding claim 75, LeCoq does not disclose a generally “L”-shaped haptic. Instead LeCoq discloses a double ring configuration. The “L”-shaped haptic according to the claimed combination allows for insertion of the haptic through a very small incision as small as 1.0 mm. The details of the “L”-shaped haptic is disclosed at page 7, lines 7-24 of the original filed specification. This particular shape or configuration of the haptic again allows for the haptic to be put through a very small incision, and also allows the haptic to be substantially rigid or stiff so that the lens optic is fully unfolded and deployed when the eyelets are slightly stretch when being attached to the cleats (see discussion at page 8, lines 26-29 of the original filed specification). This manner of providing tension across the width of the lens optic is contrary to the

arrangement disclosed by LeCoq instead requiring a compression of the lens optic to tightly fit within the double ring configuration. Most importantly, the double ring configuration disclosed in the device of LeCoq is totally unlike and dissimilar to the L-shaped haptic configuration according to the claimed invention. Thus, LeCoq does not teach or suggest the claimed invention.

Regarding claim 77, 78 and 79, the claimed combination wherein said cleats on the optic or haptic extend generally in the plane of the optic or haptic, respectively, LeCoq does not disclose such a combination, and instead LeCoq teaches away from such a combination. Thus, LeCoq does not teach or suggest the claimed invention.

Conclusion

Applicant submits that the claims of this application are allowable and that the rejections should be overruled by the Board of Appeals.

Respectfully submitted

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